In the High Court of Judicature at Madras

Dated:05.04.2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN
..
Original Side Appeal No.283 of 2004
and CMP.Nos.20136 to 20139 of 2004
and VCMP.Nos.20906 & 20907 of 2004
..

1. V. Mohanan
2. V. Ramesh .. Appellants
(Plaintiffs)

vs.

1. K. Thanickachalam
2. K. Gajendran
3. E. Narayanan .. Respondents
(Defendants)

Original Side Appeal filed under Order XXXVI rule 1 of OS Rules read with Clause 15 of Letters Patent against the order of this Court dated 16.11.2004 made in Original Application No.696 of 2004 in C.S.No.685 of 2004.

For appellants : Mrs. Chitra Sampath

For respondents: Mr. B.S. Gnanadesikan for R.1 & 2

Mr. R. Thiagarajan for R.3
..

JUDGEMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The above original side appeal has been filed against the order of the learned single Judge dated 16.11.2004 made in Original Application No.696 of 2004 in C.S.No.685 of 2004, in and by which, the learned Judge dismissed the said application filed for injunction, pending disposal of the suit.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The appellants / plaintiffs filed a civil suit in C.S.No.685 of 2004 against the respondents herein / defendants therein, praying for a decree declaring that the final decree dated 19.01.1987 passed in I.A.No.30274 of 1974 in O.S.No.3631 of 1961 as amended on 08.04.1991 is null and void, declaring their title to the suit property and for consequential relief of injunction restraining the defendants from interfering with their possession and enjoyment of the suit property. Pending disposal of the said suit, the plaintiffs filed O.A.No.696 of 2004, praying for an order of interim injunction restraining the respondents from interfering with their peaceful possession and enjoyment of the suit property. The said application was resisted by the respondents by filing counter affidavit. The learned single Judge, by the order, which is under challenge, after holding that the plaintiffs' title to the entire property is yet to be decided and similar application in a suit filed by the plaintiffs' in the City Civil Court in respect of the very same property, dismissed the said application; hence, the present original side appeal before this Court.

3. Heard Mrs. Chitra Sampath, learned counsel appearing for the appellants; Mr. B. Gnanadesikan, learned counsel for respondents 1 and 2 and Mr. R. Thiagarajan, learned counsel for the third respondent.

4. The only point for consideration in this appeal is, whether the plaintiffs / appellants have made out a prima facie case for grant of injunction till the disposal of the suit and whether the learned Judge is right in dismissing the said application?

5. In view of the limited issue, we are of the view that it is unnecessary for us to go into all the details referred to by both parties. For convenience, we shall refer the parties as arrayed before the learned single Judge.

6. It is the case of the applicants that the suit property originally belonged to one Natesa Pandithar, whose wife was Vaduvambal. After the death of Natesa Pandithar in 1958, dispute arose between Vaduvambal and one Padmavathi, wife of Raju Pandithar. The said Raju Pandithar had married the sister of Natesa Pandithar, Yogambal as his first wife. The suit in O.S.No.3631 of 1961 was filed by Padmavathi against Vaduvambal for partition and separate possession of her half share in the suit property. A compromise preliminary decree was passed in the appeals, viz., in AS.No.532 of 1964 and 256 of 1965 on the file of this Court, allotting half share each to the plaintiff and the defendant in that suit. Thereafter, Padmavathi filed IA.No.30274 of 1974, for passing final decree and before the final decree was passed, Vaduvambal died and Padmavathi appears to have recorded herself as her legal heir by playing fraud on Court. Finally,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

a final decree was passed directing the deceased defendant to perform certain acts. The said decree is non-est in law and cannot be enforced at all.

7. Padmavathi knowing fully well that one Venu Pandithar, who had been brought up by Vaduvambal was in possession of the suit property along with Vaduvambal, did not take any step to execute her decree of the year 1987 till her death in 2002. In the year 1989, Vaduvambal died bequeathing her interest in the suit property to the plaintiffs under a registered Will, appointing the plaintiffs' father Venu Pandithar as executor. Since the said Venu Pandithar pre-deceased Vaduvambal in 1984, he did not take steps to probate the registered Will. When Padmavathi, attempted to trespass into the suit property, the plaintiffs gave a police complaint on 03.07.1999 and then filed a suit for permanent injunction in OS.No.2962 of 2000 on the file of II Assistant Judge, City Civil Court, Chennai and sought for interim injunction. The plaintiffs had also filed OP.No.956 of 2000 before this Court for the grant of probate of the Will of Vaduvambal. Pursuant to the caveat lodged by Padmavathi, the said OP was converted into TOS.No.17 of 2001 on the file of this Court and as on today, the same is pending.

8. The said Padmavathi died in 2002, without any issue. The respondents 1 and 2 claiming to be her brothers have started claiming title to the suit property. They were impleaded as parties to the suit in OS.No.2962 of 2000 and in TOS.No.17 of 2001. Recently, the respondents 1 and 2 executed a registered sale deed in favour of the third respondent, claiming to be entitled to a portion of the suit property. The third respondent joining hands with respondents 1 and 2, has been trying to trespass into the suit property and hence the plaintiffs filed the suit for declaration of title and injunction. Vaduvambal was in possession of the suit property along with Venu Pandithar and his family till her death in 1989. Subsequent to her death, the plaintiffs are in exclusive possession and enjoyment of the suit property by paying property tax, water tax, etc. The revenue records are still in the name of Vaduvambal, since TOS.No.17 of 2001 is still pending. However, the plaintiffs' alone are enjoying the suit property to the exclusion of the defendants. The respondents had never been in possession of the suit property at any point of time. Since the plaintiffs' application for injunction in O.S.No.2962 of 2000 was dismissed for want of sufficient documents, the applicants are entitled to file the present application for injunction in the present comprehensive suit for declaration and injunction.

9. The respondents 1 and 2 filed a common counter statement disputing various averments made by the applicants. In

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

view of pendency of TOS.No.17 of 2001 and of the fact that similar injunction application filed in OS.No.2962 of 2000 was dismissed on merits by the II Assistant Judge, City Civil Court, Chennai, the present application for injunction is not maintainable and the application is devoid of merits.

10. The third respondent, who purchased the suit property from respondents 1 and 2 has filed a counter statement, reiterating the stand taken by respondents 1 and 2.

11. The narration of the details clearly show that the applicants are claiming right on the basis of the Will dated 21.01.1976. Admittedly, the said Will is yet to be probated and the matter is pending in the form of TOS.No.17 of 2001 on the file of this Court. Even otherwise, as rightly observed by the learned Judge, the said Vaduvambal can execute the Will with respect to her half share in the property and so, on the basis of the Will, the applicants cannot claim title for the entire property. Further, as said earlier, unless the probate proceedings comes to an end, the applicants / plaintiffs cannot get any title to the suit property.

12. It is also not in dispute that prior to filing of the present suit, the plaintiffs laid a suit in OS.No.2962 of 2000 before the City Civil Court in respect of the very same property and also prayed for permanent injunction restraining the respondents from alienating or encumbering the property and also for dispossessing the plaintiffs. In the same suit, they also filed IA.Nos.7711 and 7712 of 2000, praying for interim injunction with respect to the suit property against the respondents. It is not in dispute that by a considered order dated 31.10.2000 the City Civil Court rejected the said applications. It is also not in dispute that not satisfied with the said order, the applicants preferred appeals in CMA.Nos.84 and 85 of 2001 before this Court and by order dated 07.12.2001, both the appeals have been dismissed. In other words, in respect of similar relief for the very same property, both the trial Court and the appellate Court, after finding that the possession of the plaintiffs is unlawful, dismissed the applications as well as the appeals.

13. The learned counsel appearing for the appellants by drawing our attention to certain documents (some of them were not filed before the learned trial Judge), viz., receipts for payment of property tax and water tax, would contend that the learned single Judge ought to have accepted the claim of the applicants and also granted injunction de-hors the order passed by the City Civil Court. On perusal of the order passed by the trial Court as well as the appellate Court and the details of the property mentioned therein as well as the suit property, we are unable to accept the said contention.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. The learned counsel appearing for the appellants by drawing our attention to the judgment of the Supreme Court in the case of Ashwinkumar K. Patel vs. Upendra J. Patel reported in 1999 (1) CTC 710, would submit that even for defective title, in view of the fact that the possession of the suit property is with the plaintiffs, they are entitled to an order of injunction. On going through the factual details in the said decision, we are of the view that the possession of the plaintiff in the suit before the Supreme Court is permissive possession and in such a circumstance, we are of the view that the said decision is not helpful to the case on hand.

In the light of our discussion, particularly in view of the fact that plaintiffs' title is yet to be decided till a decree in their favour in the testamentary suit and the applicants are strangers, and in view of rejection of their injunction applications by the City Civil Court Chennai as well as the appeals filed against the same by this Court, we find that the applicants have not established a prima facie case for grant of injunction in their favour. For the same reasons, we hold that balance of convenience is also not in their favour. After considering all these aspects, the learned single Judge rightly dismissed their application for injunction and we accept the said finding. Accordingly, we find no merit in the appeal. Consequently, the original side appeal fails and the same is dismissed. No costs. Connected CMPs., and VCMPs., are also dismissed.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO

THE SUB ASSISTANT REGISTRAR
ORIGINAL SIDE, HIGH COURT,
MADRAS.

+ ONE CC TO MR. CHITRA SAMPATH, ADVOCATE (SR NO 16133)
+ TWO CCS TO MR. THIAGARAJAN, ADVOCATE (SR NO 16130)

Judgment in
O.S.A.No.283 of 2004

JRG (CO)
BP/7.4

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/